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93-404 (11)

No. 93-201

Supreme Court, U.S.
FILED
DEC 2 1993
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

ALLEN & COMPANY INCORPORATED,

Petitioner,

v.

PACIFIC DUNLOP HOLDINGS INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

**RESPONDENT PACIFIC DUNLOP HOLDINGS INC.'S
RESPONSE TO MOTION FOR CONSOLIDATION
FILED IN GUSTAFSON V. ALLOYD CO. INC.,
NO. 93-404**

Respondent Pacific Dunlop Holdings Inc. ("Pacific Dunlop"),¹ by its attorneys, Gardner, Carton & Douglas, hereby submits its Response to the Motion For Consolidation filed on November 29, 1993 by the petitioners in Gustafson v. Alloyd Co. Inc. ("Gustafson Petitioners"), No. 93-404.

1. The Gustafson Petitioners cite Supreme Court Rule 27.3 as authority for the proposition that "two or more cases involving the same or related questions may be consolidated upon motion by any party." Gustafson Petitioners' Motion For Consolidation ("Gustafson Motion") at ¶5. The Gustafson Petitioners' citation to Rule 27.3 is misleading. Rule 27.3 states only that "the Court may order that two or more cases involving what appear to be the same or related questions, be argued together as one case or on any other term as may be prescribed." (Emphasis added). Thus, by its terms, Rule 27.3 applies only after the Court has granted the

¹ Pursuant to Supreme Court Rule 29.1, Pacific Dunlop included a "List of Parties" in its Brief In Opposition To Petition For A Writ Of Certiorari Of Allen & Company, Inc., filed September 7, 1993.

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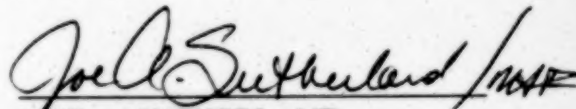
petitions for certiorari in both of the putative consolidated cases. Rule 27.3 does not authorize consolidation of pending certiorari petitions upon which the Court has not ruled.

2. No other provision of the Supreme Court Rules provides for the consolidation of pending certiorari petitions. Furthermore, the last sentence of Rule 12 provides: "A petition for a writ of certiorari shall not be joined with any other pleading." Although it is not clear whether the phrase "any other pleading" as used in Rule 12 encompasses a separately-filed certiorari petition and thus prohibits the consolidation of two certiorari petitions before either has been ruled upon, Pacific Dunlop respectfully suggests that the Court should consider each separately filed certiorari petition on its own merits. If the Court grants both petitions, if it wishes, it can then consolidate them for argument pursuant to Rule 27.3.

3. Finally, Pacific Dunlop notes that the statement in the Gustafson Petitioners Motion at n. 1 that "Pacific Dunlop involves a broker-seller" is wrong. Allen & Company, Inc., the seller in this case, was a shareholder-seller. See Pacific Dunlop's Brief In Opposition To Allen & Company, Inc.'s Petition For A Writ Of Certiorari at 2.

Respectfully submitted,

PACIFIC DUNLOP HOLDINGS INC.



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Dated: December 2, 1993